

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
ROBERT CHARLES RHODES,
:

Plaintiff,
:

-against-
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CITIBANK, N.A.,
:

Defendant.
:
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ORDER

09 cv 1636 (BMC)(LB)

Plaintiff, proceeding *pro se* and having previously obtained leave to proceed *in forma pauperis*, brings this breach of contract action purporting to base jurisdiction on diversity of citizenship. He claims that when he tried to redeem \$300,000 worth of certificates of deposit in cash, defendant required him to sign a form acknowledging the risk of receiving so large a sum of money in cash and releasing defendant from liability if the cash was lost or stolen. Plaintiff claims that defendant was not entitled to insist on his execution of such a form as a condition of redeeming the certificates in cash. Plaintiff refused to sign the form and thus as of the commencement of this action, he had not received the cash.

The case is before the Court on defendant's request for a premotion conference so that it can move to dismiss for lack of diversity jurisdiction and lack of a case or controversy. The former ground is based on the fact that both parties are New York citizens. The latter ground is based on the fact that after commencement of this action, defendant gave plaintiff the cash (totaling \$375,000) without requiring him to execute the form, a fact that plaintiff has previously acknowledged to the Court, so that plaintiff has sustained no damage and the action is moot.

At the outset, the Court agrees with defendant's suggestion that plaintiff's *ex parte* motion to proceed *in forma pauperis* was improvidently granted, as plaintiff not only has the \$375,000 in cash, but his *in forma pauperis* motion shows he owns a house valued at \$480,000. Accordingly, that portion of the prior Order granting *in forma pauperis* status [4] is VACATED. Plaintiff shall deliver a check for the purchase of the index number in this action (or cash if he prefers) in the amount of \$350 to the Clerk of this Court by June 22, 2009, failing which this action shall be dismissed.

Defendant's request for a premotion conference is denied as moot as defendant's letter of May 29, 2009 is hereby deemed to constitute a motion to dismiss pursuant to Fed.R.Civ.P. 12(b)(1). Defendant is directed to serve plaintiff with notice pursuant to Local Rule 12.1 by June 2, 2009. Plaintiff must file opposition to this motion by June 22, 2009 or this action may be dismissed.

SO ORDERED.

signed electronically/Brian M. Cogan
U.S.D.J.

Dated: Brooklyn, New York
May 29, 2009